

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: BANK OF AMERICA)
WAGE AND HOUR EMPLOYMENT)
PRACTICES LITIGATION)**

(This Document Relates to All Cases))

MDL No: 2138

Case No: 10-md-2138-JWL-KGS

**PRELIMINARY PRACTICE AND PROCEDURE ORDER UPON TRANSFER
PURSUANT TO 28 U.S.C. § 1407(a)**

It appearing that civil actions transferred to this Court and listed on Schedule A merit special attention as complex litigation, it is hereby ORDERED that:

1. Prior to the initial scheduling conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that are transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order dated April 14, 2010 and filed in this court on April 16, 2010. Those cases are listed on Schedule A attached to this Order. This Order will also apply to any tag-a-long actions filed in or removed to or transferred to this Court.

2. The civil actions listed on Schedule A are consolidated for pretrial purposes. This consolidation does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3. No later than **May 10, 2010**, each party shall update corporate disclosure statements pursuant to Fed. R. Civ. P. 7.1.

4. All matters relating to pretrial and discovery proceedings in this case will be addressed at an initial scheduling conference on **Friday, May 14, 2010 at 10:00 a.m.** in the Special Proceedings Courtroom, Room #655, Robert J. Dole United States Courthouse, 500 State Avenue, Kansas City, Kansas. Counsel are expected to familiarize themselves with the *Manual for Complex Litigation Fourth (Fed. Judicial Center 2004)* (“MCL 4th”) and be prepared to suggest procedures which will facilitate the expeditious, economical and just resolution of this litigation. To the extent applicable, the items listed in MCL 4th Sections 11.21, 11.211, 11.212, 11.213 and 11.214 shall constitute a tentative agenda for the conference. Counsel shall confer and seek consensus with respect to items on the agenda, including a proposed discovery plan, amendment of pleadings and consideration of procedures for resolving collective action and/or class action allegations and motions. Any proposals as to agenda items or proposed case management orders, shall be submitted by **May 10, 2010**.

5. At or following the May 14, 2010 initial scheduling conference, the Court will appoint liaison counsel who will be charged with essentially administrative matters. For example, liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison groups. To the extent such orders and notices are not available electronically to all parties, liaison counsel shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Liaison counsel shall maintain complete files with copies of all documents served upon them and make such files available to parties

within their liaison groups upon request. Liaison counsel are authorized to receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to Rule 5.2 of the Panel's *Rules of Procedure* on behalf of all parties within their liaison groups and shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison group in a manner agreeable to the parties or as determined by the Court failing such agreement. The Court welcomes any suggestions for the appointment of liaison counsel. At the initial scheduling conference the parties shall be prepared to discuss any additional needs for an organizational structure consistent with the efficient handling of this matter, including those suggestions contained in Section 10.22 of MCL 4th.

6. Plaintiffs and defendants shall submit to the chambers of Judge John W. Lungstrum and the chambers of Magistrate Judge K. Gary Sebelius, by mail or email at ksd_lungstrum_chambers@ksd.uscourts.gov and at ksd_sebelius_chambers@ksd.uscourts.gov, no later than **May 10, 2010** a brief written statement which indicates their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses and may not be offered in evidence against a party at later proceedings. To the extent known, the statements shall list all pending motions and all related cases pending in state or federal court, together with their current status, including any discovery taken to date. The parties shall be limited to one such submission for all plaintiffs and one such submission for all defendants.

7. Each party represented by counsel shall appear at the initial scheduling conference through an attorney who will have primary responsibility for the party's interest in this litigation. Attendance at the conference will not waive objections to jurisdiction, venue or service.

8. Prior to the initial scheduling conference, service of all documents shall be made on each of the attorneys on the panel attorney service list attached hereto and designated as Schedule B. Any attorney who wishes to have his or her name added to or deleted from such Panel Attorney Service List may do so upon request to the Clerk and notice to all other persons on such service list. At the initial scheduling conference, the parties shall submit a list of attorneys and their addresses, email addresses, telephone numbers and facsimile numbers. Only one attorney for each party separately represented shall be included on such list.

9. The defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set by the Court. Pending the initial scheduling conference and further orders of this court, all outstanding discovery proceedings are stayed, no further discovery shall be initiated, and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled.

10. The Clerk of the Court will maintain a master docket case file under the style "**In Re: Bank of America Wage and Hour Employment Practices Litigation**" District of Kansas case number **10-md-2138** and the Multidistrict Litigation case number **MDL 2138**. When a pleading is intended to apply to all actions, this shall be indicated in caption by the words: "**This Document Relates to All Cases.**" When a pleading is intended to apply to fewer than all cases, this Court's docket number for each individual case to which the document is related shall

appear immediately after the words **“This Document Relates to...”**.

11. Any document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district. The District Court of Kansas is an electronic court and all filings shall be submitted electronically unless otherwise ordered by the court. Counsel are required to register for electronic filing on the Form A attached hereto. The Court directs counsel to its website (www.ksd.uscourts.gov) for further information and instructions for electronic filing. For any questions with regard to electronic filing and CM/ECF, please contact Marla Gonzales at 913-735-2208 or marla_gonzales@ksd.uscourts.gov.

12. The parties are directed to make all entries on the master docket sheet (10-md-2138) with a notation listing the cases to which the document applies; except that a document closing a case will also be entered on the individual docket sheet for the case to which it applies. All documents shall be filed in the master file. Unless specifically ordered otherwise, no chambers copies shall be provided.

13. Any document filed in any of these actions which is substantially identical to any other document filed in another of these actions shall be sufficient if it incorporates by reference the document to which it is substantially identical. Where counsel for more than one party plan to file substantially identical documents they shall join in the submission of such documents and shall file only one document on behalf of all so joined.

14. Any order including protective orders previously entered by this Court or any transferor district court shall remain in full force and effect unless modified by this Court upon application.

15. When an action that properly belongs as a part of In Re: Bank of America Wage Hour Employment Practices Litigation is hereinafter filed in the District of Kansas or removed or transferred here from another court, the Clerk of this Court shall:

- a. File a copy of this Order in the separate file for such action;
- b. Make an appropriate entry on the master docket sheet;
- c. Mail to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order; and
- d. Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.

16. In the event that a case is remanded from this court, the parties shall furnish to the Clerk of the Court a stipulation or designation of the contents of the record and furnish all necessary copies of any pleadings filed so as to enable the Clerk of the Court to which it is remanded to comply with the order of remand.

17. Each party shall take reasonable steps to preserve documents and other records containing information potentially relevant to the subject matter of this litigation.

18. In accordance with Rule 5(d), Fed. R. Civ. P., discovery requests and responses shall not be filed with the Clerk or sent to chambers except when specifically ordered by the Court to the extent needed in connection with a motion.

19. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Inquiries to the Court concerning scheduling and related matters shall be directed to Sharon Scheurer, courtroom deputy for Judge

John W. Lungstrum, at (913) 735-2325, or to the chambers email account, which is ksd_lungstrum_chambers@ksd.uscourts.gov. Inquiries concerning matters assigned to the magistrate judge shall be directed to Sheryl Gilchrist, courtroom deputy for Magistrate Judge K. Gary Sebelius, at (785) 338-5480, or to the chambers email account, which is ksd_sebelius_chambers@ksd.uscourts.gov.

20. The court recognizes that cooperation among counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between counsel shall not be deemed a waiver of attorney-client privilege or the protection afforded attorney work product, and cooperative efforts contemplated above shall not in any way be used against any party by any other party. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

IT IS SO ORDERED.

Dated in Kansas City, Kansas this 23rd day of April, 2010

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge

SCHEDULE A

Amanda Brawner, et al., v. Bank of America, N.A. D. Kan. No: 09-2073

Curtis Schreiber v. Bank of America, N.A. D. Kan. No: 09-1336

Andrew Gordillo v. Bank of America, N.A. D. Kan. No: 10-2213

John S. Paulino v. Bank of America, N.A. D. Kan. No: 10-2214

Joshua Gold v. Bank of America, N.A. D. Kan. No: 10-2215

Vicky Carrero, et al., Bank of America, N.A. D. Kan. No: 10-2216

Juan Franco v. Bank of America, N.A. D. Kan. No: 10-2217

Edward Franco v. Bank of America, N.A. D. Kan No: 10-2218

Sonia Fortner, et al., Bank of America, N.A. D. Kan No: 10-2220

Sanaz Masourian, et al., Bank of America, N.A. D. Kan. No: 2221

Virginia Kauffman, et al., v. Bank of America, N.A. D. Kan. No: 10-2229

Jennifer Zhou v. Bank of America, N.A. D. Kan. No: 10-2231

SCHEDULE B – PANEL ATTORNEY SERVICE LIST

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Nathan A. McCoy



UNITED STATES DISTRICT COURT DISTRICT OF KANSAS

Attorney Electronic Filing Registration Form

MDL 10-2138 Bank of America

Name: _____

Office: _____

Address: _____

Address: _____

City: _____ State: _____ Zip: _____

Office Phone: _____ Ext.: _____ Fax: _____

Kansas Bar # (or other state Bar #): _____

Internet E-mail Address: _____

Last 4 Digits of Social Security Number: _____

By registering, attorneys consent to electronic service of all documents.

By completing this form, attorneys certify that they are members in good standing of the bar of this court, are applying for or have been granted admission pro hac vice or are involved in an MDL action in a case currently pending before this court and that they have read and are familiar with the rules of practice and the administrative procedures guide governing electronic filing, both which may be found at www.ksd.uscourts.gov.

The electronic filing of a petition, pleading, motion, or other paper by an attorney who is a registered participant in the Electronic Filing System shall constitute the signature of that attorney under Federal Rule of Civil Procedure 11.

By registering, the undersigned agrees to abide by the rules and regulations in the most recent general order currently in effect and any changes or additions that may be made in the future to the general order, the administrative procedures guide or this court's local rules.

PRO HAC VICE ATTORNEYS: Each attorney applying for pro hac vice admission must complete and sign an Electronic Filing Registration Form and file it as an attachment to the motion for pro hac vice admission. Attorneys admitted pro hac vice may then retrieve documents electronically through PACER and will receive System-generated notices of electronic filings. However, the System will not allow the attorney to file documents electronically.

LOGIN/PASSWORD INFORMATION

-Attorneys Admitted to the District of Kansas – your login/password will be mailed to you.

-Pro Hac Vice Attorneys – no login/password will be issued as local counsel is responsible for all electronic filing.

-MDL Attorneys – issuance of a login/password will be determined by the presiding judge in MDL actions in this court.

ATTORNEYS ADMITTED TO THE DISTRICT OF KANSAS and MDL ATTORNEYS:

Return this form via hand delivery or U.S. mail to:

Clerk, U.S. District Court
Electronic Filing Registration
259 U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101

OR fax completed form to:

913-735-2201

OR email completed form to:

ksd_attorney_registration@ksd.uscourts.gov
for pro hac vice admission)

ATTORNEYS APPLYING FOR PRO HAC VICE ADMISSION

Attach completed form to pro hac vice motion

(REQUIRED)

Date

Applicant's Signature

Note: You must sign this form with your original "wet" signature. The "s/ typed name" format is not allowed here.